

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**FILED
CLERK**

11:39 am, Mar 09, 2017

THOMAS GESUALDI, LOUIS BISIGNANO,
ANTHONY D'AQUILA, MICHAEL O'TOOLE,
MICHAEL BOURGAL, FRANK H. FINKEL,
JOSEPH A. FERRARA, SR., MARC HERBST,
DENISE RICHARDSON, THOMAS
CORBETT, *as Trustees and Fiduciaries of the
Local 282 Welfare Trust Fund, the Local 282
Pension Trust Fund, the Local 282 Annuity Trust
Fund, the Local 282 Job Training Trust Fund,
and the Local 282 Vacation and Sick
Leave Trust Fund,*

ADOPTION ORDER
15-cv-6727 (ADS)(ARL)

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Plaintiffs,

-against-

LUBCO TRANSPORT INC.,

Defendant.

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APPEARANCES:

Trivella & Forte LLP

Attorneys for the Plaintiffs

1311 Mamaroneck Avenue

Suite 170

White Plains, NY 10605

By: Arthur Joseph Muller, Esq.,

Jonathan Michael Bardavid, Esq., Of Counsel

NO APPEARANCES:

LUBCO TRANSPORT INC.

The Defendant

SPATT, District Judge.

On November 23, 2015, the Plaintiffs, the trustees and fiduciaries of Local 282 Welfare Trust Fund, the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282

Job Training Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund (the “Plaintiffs”) commenced this action against the Defendant Lubco Transport Inc. (the “Defendant”), alleging violations of Sections 502(a)(3) and 515 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1132(a)(3) and 1145, and Section 301(a) of the Labor Management Relations Act of 1947 (“LMRA”), as amended, 29 U.S.C. § 185. The Plaintiffs sought to collect delinquent contributions determined to be due and owing pursuant to two audits.

On January 20, 2016, the Clerk of the Court noted the default of the Defendant. On June 3, 2016, the Plaintiffs moved for a default judgment.

On June 4, 2016, the Court referred the Plaintiffs’ motion to Magistrate Judge Arlene R. Lindsay for a report and recommendation as to whether the default judgment should be granted and, if so, whether damages should be awarded.

On February 22, 2017, Judge Lindsay issued a report and recommendation (the “R&R”) recommending that default judgment be granted; that the Plaintiffs be awarded damages in the amount of \$70,338.34, as well as prejudgment interest from June 2, 2016 to the date of judgment, calculated at a daily interest in the amount of \$11.91. The Plaintiffs filed proof of service of the R&R to the Defendant on February 22, 2017.

It has been more than fourteen days since the service of the R&R, and the parties have not filed objections.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result. See Coburn v. P.N. Fin., No. 13-CV-1006 (ADS) (SIL), 2015 WL 520346, at *1

(E.D.N.Y. Feb. 9, 2015) (reviewing Report and Recommendation without objections for clear error).

Accordingly, the R&R is adopted in its entirety. The Clerk of the Court is directed to enter judgment for the Plaintiff in accordance with the R&R, and to close this case.

SO ORDERED.

Dated: Central Islip, New York

March 9, 2017

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge